LIR-USA Manufacturing Co., Inc. *and* Local Union 463, International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL–CIO. Cases 29–CA–13844, 29–CA–13903, 29–CA–13929, 29–CA–14082, 29–CA–14088, and 29–CA–14089

February 11, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On July 9, 1990, Administrative Law Judge Eleanor MacDonald issued the attached decision. The General Counsel filed exceptions and a supporting brief and the Respondent filed a brief in opposition to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, LIR-USA Manufacturing Co., Inc., Yaphank, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. With respect to the judge's dismissal of the allegations of constructive discharge of inspectors Rosario and Jansen, we agree with the judge that the evidence relied on to find that any changes in the inspectors' duties were not motivated by antiunion animus, including the detailed testimony of various witnesses she found to be credible, was more probative and outweighed Sanchez' summary antiunion explanation for the changes, which, as the administrative law judge found, was to ''taunt'' Rosario and Jansen. Accordingly, we find, as did the judge, that Rosario and Jansen were not constructively discharged in violation of Sec. 8(a)(3).

Further, in adopting the judge's finding that there was ''no evidence'' that the Respondent denied bathroom privileges to employees, denied insurance coverage to employee Rosario, and promised employees promotions if they abandoned the Union, we note the General Counsel's exception wherein he cites transcript pages regarding the above allegations. Concerning the alleged denial of bathroom privileges and the alleged denial of insurance coverage to employee Rosario, we have reviewed the cited pages and find no merit in the exceptions. Concerning the alleged promise of promotions, we note that the General Counsel cites to testimony by former employee Jansen. As an initial matter, we note the judge's dismissal of that allegation as to Jansen, on credibility grounds. Moreover, we have reviewed the cited pages and find that Jansen's testimony does not support a finding of a violation.

Finally, regarding the judge's finding that there was ''no evidence'' that the Respondent ''engaged in the myriad other violations alleged,'' we note the General Counsel's exception that, while concededly no evidence was presented on three of the allegations (which the General Counsel listed), evidence was presented concerning all of the other allegations and the instant case should be remanded to the judge to, inter alia, make findings on these other allegations. In light of the General Counsel's failure to comply with Sec. 102.46(b)(1) and (2) of the Board's Rules and Regulations, which require, inter alia, that each exception shall designate the particular matters being excepted to and provide precise citation to the portions of the record relied upon, we deny the General Counsel's request to remand and adopt the judge's decision.

Craig L. Cohen, Esq., for the General Counsel.
John M. Capron, Esq. and *Edward L. Rouse, Esq. (Fisher & Phillips)*, of Atlanta, Georgia, for the Respondent.
David Jaffe, Esq., of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in New York, New York, from October 23 to 27, 1989. The complaint alleges that Respondent, in violation of Section 8(a)(1), (3), (4), and (5) of the Act:

1. Promised its employees promotions, wage increases, return to former assignments, and unspecified improvements if they abandoned the Union.

2. Threatened its employees with less desirable work, with discharge and with a lawsuit if they supported the Union.

3. Interrogated its employees.

4. Circulated forms to resign from the Union and solicited its employees to execute the forms.

5. Restricted the movements of employees, ordered its employees to refrain from talking to other employees, transferred employees, provided more arduous work, demoted employees, and terminated employees.

6. Denied union representation to employees for disciplinary interviews, disciplined, and terminated employees.

7. Unilaterally changed past practice by instituting a new requirement that the Union give 24 hours' written notice as a condition of the right of access.

Respondent denies the material allegations of the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party in February 1990, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent a Delaware corporation with its principal office in Yaphank, New York, is engaged in the wholesale manufacture, sale, and distribution of plastic packaging components for the cosmetic industry. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the

Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

In May 1988, a number of Respondent's employees including Anna Rosario, Janet Peters, Migdalia Dilan, Alva Diaz, Gloria Gerena, Marta Beronio, Helen Jansen, Peter Sargeant, Joe Kilgore, and others, organized the plant. The Union won the election, held in summer 1988, by a wide margin, and a collective-bargaining agreement was signed on October 18, 1988.

Roland Harmer became plant manager in June 1988, during the Union's organizing drive. The plant was in a state of chaos, according to Harmer. There was no leadership: management spoke French and most of the workers spoke Spanish.

The bargaining unit consists of the following employees:

> All full-time and regular part-time production and maintenance employees, inspection employees, shipping and receiving employees and warehouse employees employed by Respondent at its Yaphank facility; but excluding all office clerical employees, professional employees, guards and supervisors as defined in Section 2 (11) of the Act.

B. *Alleged Demotion and Discharge of Employees*

1. Anna Rosario

Rosario was hired by Respondent in 1986 as a machine operator. A few months later, she was trained to be a quality control inspector on the second shift. As part of her duties, Rosario testified, she went to the machines where compacts were being produced, took samples to the quality control room, and checked them using specialized measuring devices. If there was a problem with the goods being produced by a certain machine, Rosario informed the foreman and if the problem was the operator himself, then Rosario informed the supervisor. Under a new quality control manager named Gary Quillian, the quality control function was expanded. Quillian instituted the use of new forms to record the results of inspections, he encouraged the inspectors to become knowledgeable in the field of quality control generally, and he seems to have inspired the inspectors with a feeling that they were performing a highly skilled and vital function. In June 1988, Quillian had an accident and was replaced by Manager John Krumenacher. Krumenacher instituted new forms and procedures for recording the results of inspections.

According to Rosario, in early October 1988, she went to a union meeting and came to work late.[1] When Plant Manager Harmer asked why she was late, she told him she had been at a union meeting.[2] Rosario took her quality control forms to the machines on the production line and began checking the products. Then Harmer told her to go back to the quality control room and stay there. According to Rosario, she had no work to do that night. The next day, Krumenacher told her not to antagonize Harmer. He told Rosario that he would bring work for her to do and put it outside the quality control room. He told Rosario to stay between the quality control room and the finished goods area and not to go to the machines on the production line. According to Rosario, Krumenacher put ''rework'' out for her to do. She stated that before October 1988, she had never been assigned to do rework.

The question of ''rework'' is one of the areas of contention in the instant case. Rosario testified that rework denotes going through a box of items rejected by a by customer and culling the unusable items. Then the box is repacked with items that are up to the customer's standards. Rosario stated that sometimes she repacked substandard goods on instructions of management. Harmer testified that rework involves repacking a box of items that has been rejected by a customer or has been rejected from the production line before being sent to a customer. The bad items are removed and then the box is filled with acceptable items. Harmer stated that rework is quality control work. During the hearing, General Counsel took the position that rework was not quality control work because it does not involve going to the machines on the production line and advising management that there are problems before the goods are packed into boxes.

Rosario testified that one one occasion she was relaying a message to a Spanish speaking employee: Harmer was standing close by and he yelled, ''In English, I don't want you to speak any Spanish.'' Harmer explained during his testimony that although the plant does not have an ''English only'' rule, he was concerned that management should be able to understand what was being communicated at the plant so that it could be aware of problems. He wanted conversations relating to work to be carried on in English when a manager was present.

Rosario asked for and received a 2-week leave of absence which ended on November 21, 1988.[3] When she returned to work, Rosario was told that she would be operating machines while the operators were away on short breaks or for meals. The practice of filling in for machine operators is known as ''giving breaks.'' Rosario testified that she had never given breaks on the machines before this occasion. On November 23, while she was giving a break, Second-Shift Supervisor Sanchez came to her and said, ''look what happened to you, you are not doing your quality control inspections.''[4] Sanchez said that he had spoken about Rosario to Lucien Duranton, Respondent's president, and that she should speak to Duranton herself and tell him she was sorry and that she would help him get rid of the Union. Rosario's next scheduled workday was November 28, 1988. She called in sick that day and for several days thereafter. Eventually, she told Krumenacher that she was sick at the way she was being treated and over the fact that she was not working as a qual-

[1] Apparently, most of the second shift work force was late that day.

[2] Rosario was active in bringing the Union to the plant. She was an observer during the election and a member of the negotiating committee.

[3] Rosario's request for a leave of absence stated that she was going to the hospital for tests and visiting her mother.

[4] Sanchez did not testify in this proceeding. He was discharged in April 1989.

ity control inspector. She was sick and tired and did not want to go back again.[5]

Rosario held no communication with Respondent until she was offered reinstatement to her position as a quality control inspector by letter of March 27, 1989. The letter stated that Respondent ''acknowledges that it has a statutory duty to make job assignments only for legitimate business reasons. Job assignments will not be affected by an individual's interest in, and activities on behalf of, the Union. The Company does, however, have the right under Article 29 of the agreement to assign work without regard to classification, based on business needs.'' The letter noted Respondent's awareness of many complaints about Sanchez' treatment of Rosario. It assured Rosario ''that statements and conduct attributed to Mr. Sanchez were not authorized by, and that Mr. Sanchez is no longer employed by LIR-USA Manufacturing Co., Inc.''[6] At about this time, Respondent sent two notices to its employees informing them of their right to support the Union and stating, in substance, that if Sanchez had violated the Act it was not at Respondent's behest and contrary to its instructions.

Rosario went back to work on April 17, 1989. Harmer told her to check some products. Rosario testified that from this time until she resigned on July 10, 1989, she checked pieces rejected by customers and gave breaks to machine operators. She did not work in the quality control room and she did not go to the machines on the production line in order to remove pieces for testing. Rosario used quality control inspection forms to record her findings. Her affidavit given to a Board agent states that in the past Rosario did inspection work at the machines while the machines were running but that now she did inspection work after the pieces had been boxed. Rosario testified that she did what she considered to be true quality control work for 1-1/2 to 2 hours daily.

The evidence shows that before the collective bargaining agreement was executed, Respondent employed ''lead ladies'' whose duties included, inter alia, giving breaks to machine operators. The position of lead lady was abolished under the terms of the contract.

Louis Passi, the purchasing manager of the Company, testified that his duties in purchasing, scheduling, and running the warehouse require him to circulate around the plant. Passi recalled that during the time between the signing of the contract and the time that Rosario resigned for the first time, he saw her giving breaks on the machines. Most of the time Rosario was in the finished goods area checking out the finished products and at times she was in the quality control room. Passi had a particularly impressive demeanor while testifying and I credit his testimony.

Migdalia Dilan, a supervisor at the plant, testified about the duties of quality control inspectors. Dilan stated that Rosario was a quality control inspector both before and after her first resignation in 1988. According to Dilan, Rosario had the same assignments after she returned except that she no longer went to check production at the machines.

Testifying in detail about Rosario's duties in 1988, Dilan stated that Rosario went around the production line and checked items at the machines periodically. Although the lead ladies usually gave breaks to machine operators, Rosario would occasionally help out with breaks if necessary. Rosario spent a lot of time inspecting boxes of finished goods. If there was something wrong, Rosario was supposed to tell Dilan, but sometimes Rosario spoke directly to the machine operators and she even stopped the production a few times. On occasion, Rosario told operators that certain items were unacceptable when Dilan thought that they met the applicable standards. Dilan instructed Rosario that she should not tell the machine operators what to do; Rosario was supposed to inform either Dilan or a mechanic if there was a problem and let them exercise their supervisory authority. Dilan testified that Rosario did not use the instruments in the quality control room on a daily basis. Usually an experienced person can tell by looking at an item and comparing it to a range board of samples if it is acceptable.[7] Dilan testified that when Rosario left the second time, she was not replaced immediately; about September 1989, Maria Della Rocca was hired to do her work. Della Rocca helps with breaks and checks boxes of finished goods. Concerning rework, Dilan testified that both quality control employees and machine operators do rework and sometimes they do it together.

In addition to the testimony of all the other witnesses, Maria Della Rocca, a new quality control inspector at the plant, testified about her duties. She stated that for 1 to 2 hours per day, she gives breaks to machine operators, she fills out inspection reports, and she does rework. Della Rocca stated that she does not use the instruments in the quality control room and she has been instructed not to speak to the operators about problems with production.

Harmer testified that before the collective-bargaining agreement was signed, the lead ladies relieved operators on the line, checked quality and quantity on the line, and brought supplies to the line. Others who relieved machine operators were quality control employees, supervisors, and maintenance people. Now that the lead lady position has been abolished, the quality control employees give breaks to machine operators, but they do not perform any other work that had been performed by lead ladies.

According to Harmer, after Krumenacher was fired in April 1989, Fred Lloyd was hired as quality control manager. Harmer instructed him that the quality control employees were not to talk to the machine operators. This was to insure that the operators have a single line of responsibility—to management. Harmer's aim in instituting this rule was to avoid waste of time and confusion. Harmer testified that since he took over the plant, production has increased and profits have increased. He stated that he had improved the organization at the plant, he halted the indiscriminate use of bathroom privileges, and he restricted the quality control employees to advising management. Now that the quality control employees no longer go to each machine, they do not halt the production line on their own and there is less confusion. According to Harmer, the percentage of shipments rejected by customers is constant and has not been affected by the change in the duties of the quality control employees.

[5] After Rosario left Respondent's employ, Charging Party filed certain of the charges alleging that she had been discriminated against and constructively discharged by Respondent due to her support and activities for the Union.

[6] Soon after this, Rosario saw Sanchez at her sister's birthday party. Sanchez told her that she was responsible for his being fired.

[7] These are boards on which samples of production are mounted, from the best to the worst.

Harmer testified that the function of the quality control inspectors was discussed during negotiations and that the Company had told the Union their function was to advise management.

Harmer stated that when Rosario came back to work, she inspected newly produced compacts, she used the quality control room once or twice a week, and she provided relief to the machine operators. It is not necessary to use the measuring devices in the quality control room all the time; usually one can tell by looking whether there is a problem with the product, Harmer said, pointing out that the Company produces cosmetics containers, not spacecraft.

2. Helen Jansen

Jansen began as a full-time machine operator in 1987 and then became a quality control inspector. She was active in bringing the Union to the Company and she was a member of the Union's negotiating committee.

Jansen described her duties as consisting of checking production at the machines, checking the pieces in the quality control room using the various gauges and testing devices, and informing supervisors of any defects. Jansen used forms to record the results of her inspections. Once negotiations for the collective-bargaining agreement commenced, according to Jansen, her job changed. John Krumenacher told her that she was going to do range boards. Jansen also did rework in the quality control room. Jansen testified that in September 1988, Harmer saw her walking out of the quality control room with some boxes; he told her to get back into the room and stop talking to the girls. Jansen stated that she was confined to the quality control room. She also stated that she did machine operators work.[8] In October 1988, Jansen testified, Supervisor Janet Peters told her to stay in the quality control room where she belonged.

Peters testified that before the collective-bargaining agreement was signed, Jansen and Mary Jane De Maio were the two quality control inspectors assigned to her shift. Peters stated that these two inspectors checked production before it went out, went around the production lines and checked the pieces being made, gave breaks to operators, and made up samples of pieces to send to customers. After the contract was signed, there were no more lead ladies so Peters and the quality control inspectors gave breaks.

Jansen stated that in late January 1989, Domingo, a packer, told her that Peters said she had to sweep the floor and then she was instructed to sort out cardboard and foam. Domingo is not a supervisor and it was not explained how this incident arose. Peters denied instructing Domingo to tell Jansen to sweep the floor. According to Peters, machine operators are not assigned to sweep floors; the Company employs people to do this. But, on occasion, a machine operator might clean up around a machine if the machine is idle and the operator has nothing to do. I find that Peters did not instruct Jansen to sweep the floor.

Jansen took a leave of absence due to personal reasons. She was scheduled to return to work on March 15 or 16, 1989, but she did not return until March 19 at which time she informed Personnel Manager Maureen Leverich that she wanted to quit. Leverich told her that she was fired for not returning on time. Jansen testified that she resigned because she wanted to be a quality control inspector, not a machine operator. Jansen began a training program for a new job at a nursing home while she was on her leave of absence. Although the training program was unpaid, it appears that at the time of the instant hearing she was earning more at her new job than she had while in Respondent's employ.

3. Discussion and conclusions

I have studied the testimony of all the witnesses on this subject. I find that both Rosario and Jansen exaggerated parts of their testimony on this subject. Both testified that they no longer did their quality control inspection jobs after a certain time when the Union came to the plant. However, both were later brought to concede that they did a certain amount of work identical to what they had done before the Union. Rosario did what she considered to be quality control work several hours per day. Inspection reports were introduced into evidence and other witnesses gave credible testimony concerning their duties and use of the quality control room. I find that Rosario and Jansen were not very reliable on the subject of their job duties. Further, Jansen was confused and angry on the witness stand. Her recollection seemed inexact and she was unpersuasive.

Both Rosario and Jansen testified that they could not stand the way they were treated on the job and that they were forced to quit. Their alleged constructive discharges were based on changes in the content of their job duties as well as on their working conditions. Rosario and Jansen testified that they were no longer doing quality control inspector duties. It is uncontroverted that they were no longer inspecting the compacts as they were being manufactured on the machines. Both Rosario and Jansen were told, sometime in the fall 1988, that they would no longer inspect the products on the production line, but that they would inspect them in boxes. The inspections were carried out either in the quality control room or in the nearby finished goods area. In addition, when Krumenacher replaced Quillian in the summer 1988, he began replacing the forms that Quillian had used for quality control inspection reports with new forms of his own devising. Further, when Krumenacher left Respondent's employ in April 1989, Harmer took over some aspects of quality control supervision while a new manager was being trained. At this time, the job changed again. I credit Harmer's explanation that he decided to have quality control inspections carried out away from the machines and to prohibit the quality control inspectors from speaking to the machine operators about their work in order to prevent disruptions to the production line. Harmer wanted the inspectors to offer information to management so that management could decide what action to take; he did not want the inspectors to have the authority to stop the production line because they perceived a problem with the quality of the production. The record establishes that all quality control inspectors were given these instructions, not just Rosario and Jansen. Further, although it is clear that Rosario and Jansen did not use the instruments in the quality control room as often as they did at the beginning under Quillian's direction, it is clear that none of the inspectors do so. I find that management changed the duties of the quality control inspectors in accord with its perception of the best way to conduct its business.

[8] It was not explained how Jansen could operate a machine on the production floor while being confined to the quality control room.

The duties of the inspectors also changed in that they were required to give breaks to machine operators for a certain time during the day. The lead ladies who used to give these breaks are no longer employed at the plant. As a result, both supervisors and inspectors give breaks to the machine operators. The evidence establishes that Rosario and Jansen were not singled out in this respect; all inspectors give breaks for 1 to 2 hours per day since the discontinuance of the lead lady position. Further, I do not credit the testimony of Rosario and Jansen that before the signing of the collective-bargaining agreement they never gave breaks. Rather, I credit Dilan, Harmer, and Peters that quality control inspectors used to give breaks on an occasional basis before the Union came on the scene.

Both Rosario and Jansen obviously resented doing ''rework,'' that is, culling unacceptable compacts from a box of finished goods and repacking the box with usable items. Both Dilan and Harmer credibly described this task as part of the quality control inspectors' duties. I agree. Rework involves a decision whether a compact meets the buyer's standard. No reasoned argument has been made to show why this work, which involves the application of quality control judgment, is different from the other duties performed by the inspectors. The fact that the compacts may already have been packed in a box is irrelevant.

I cannot find that Rosario and Jansen were confined to the quality control room as a punitive measure. The facts do not support such a conclusion.

The Board has stated its standards for a finding of constructive discharge in *EDP Medical Computer Systems*, 284 NLRB 1232, 1234 (1987):

> it must first be proven that the burdens on the employee caused, and [were] intended to cause, a change in working conditions so difficult or unpleasant as to force the employee to resign. Second, it must also be shown that these burdens were imposed because of the employee's union or other protected concerted activities.

In the instant case there was no reduction in the pay of either Rosario or Jansen. There was no testimony comparing the machine operator job with the quality control job that would tend to show the relative merits of each job. No facts were presented to show in what way, if any, relieving operators for their breaks, doing rework, and inspecting compacts away from the machines rather than at the machines were tasks that were difficult or unpleasant. It seems to me that the unspoken content of Rosario's and Jansen's testimony was that they perceived some power or prestige in the ability to inspect compacts at the machines and in the more frequent use of the measuring devices in the quality control room. Further, Quillian had obviously inspired them with a sense of the importance of their mission, and they disagreed with any alteration in the regime he had instituted. While the diligence and pride in their work of Rosario and Jansen is admirable, it was not unlawful for the Company to change its employees' job duties according to the needs of the organization. Thus, the facts do not support a finding that Rosario and Jansen were constructively discharged and that Rosario was not returned to her former position on her reinstatement in April 1989.

Although Sanchez' comments on the subject of the change in duties of quality control inspectors were unlawful, as will be discussed below, I do not find them dispositive on the issue of constructive discharge. Sanchez voiced his strong antiunion sentiments without restraint, but he was not shown to have any role in deciding the specific duties of quality control inspectors. The slight probative value of his comments is far outweighed by the evidence I have considered concerning the reasons for the various changes in the duties of inspectors as well as the evidence showing what those duties were before the signing of the collective-bargaining agreement.

C. *Alleged Threats, Promises, and Solicitation*

1. The facts

About October 5, 1988, according to Rosario, Foreman Sanchez saw her doing rework and asked her how she felt not doing quality control inspection. He said, ''That fucking union of yours is doing all this''; later he told her that Harmer was making plans to get rid of all the union activists because they were responsible for bringing the Union to the plant.

As is more fully described below, Respondent contends that it told the Union and employees that Sanchez was a ''loose cannon'' whose statements it disavowed.[9]

After the contract was signed in mid-October 1988, according to Harmer, an employee named Helen Kramer told him that employees were being offered $200 or $250 for signing a union membership card.[10] Harmer testified that he spoke to Rosario and told her that she was an agent of the Union and could be held responsible if someone decided to take action. Harmer stated that other employees besides Kramer had complained to him, but he was unable to recall their names. Rosario testified that Harmer came up to her on this occasion screaming that it was all her fault, ''You and your damn Union.'' He took her to his office and told her she would pay, ''I'm going to see that the company sues the Union and you and I will see that your job is terminated here.'' Harmer denied that he threatened to discipline or discharge Rosario, he only gave her a warning that she might be held responsible for misrepresentations by the Union. Respondent has offered no theory under which Rosario could have been held responsible even if a misrepresentation had

[9] The term ''loose cannon'' dates from the days of wooden war ships when muzzle loading cannon, mounted on heavy wooden wheels called ''trucks,'' were controlled by a system of ropes and pulleys. The cannons were moved forward to extend the muzzles through gun ports for firing. After being fired, the cannons were retracted to give the gun servers access to the muzzles in order to swab the barrels—killing any live sparks—before reloading with powder and shot. Then, the cannons would be rolled so that they again projected through the gun ports. On occasion, the ropes used to pull a cannon back and forth would part or be burned, and the men serving the cannon would be unable to control or restrain it. The cannon would then roll uncontrollably around the gun deck, changing direction with each roll of the ship. Such a loose cannon was virtually unstoppable and highly destructive to anything on the gun deck, especially the men.

[10] There is no reliable proof that such an offer was made. It seems likely that Kramer heard that certain red circled titles were to receive a signing bonus under the newly executed collective-bargaining agreement and that she misunderstood the information.

been made; Harmer did not contend that Rosario herself was making any misrepresentations. Thus, Harmer's version of the conversation is suspect. I shall credit Rosario's testimony that Harmer threatened to terminate Rosario and threatened to involve her in a lawsuit because of her activities on behalf of the Union.

Jansen testified that in September 1988, Harmer spoke to her in his office and offered her a position as a junior supervisor. When Jansen asked how this would affect the Union, Harmer said she could not be in the Union if she accepted this position. According to Jansen, Harmer said if she told anyone about the conversation he ''would slash my tongue.'' Harmer testified that although he offered Jansen a promotion, he did not threaten her. I credit Harmer.

In late October 1988, Jansen saw Sanchez at a supermarket. He asked her why she joined the Union. Jansen said it was to make things better. Then Sanchez said the Union couldn't help her and that he would try to get rid of everyone who started the Union. In November 1988, Jansen met Sanchez in the cafeteria. Sanchez told her that the Union could not do anything for her and asked how she liked being on a machine. When Jansen replied that she would rather be doing quality control, Sanchez said there was nothing the Union or anyone else could do. Sanchez was not Jansen's supervisor. Jansen had been told by Respondent during the negotiations that Sanchez was a loose cannon and that he did not speak for the Company.

Harmer testified that in November 1988, some employees wanted to know how to resign from the Union.[11] According to Harmer, Sanchez asked him how employees could resign from the Union. Harmer told Sanchez that he could not approach the employees, but that if they approached Sanchez he could give the employees a form. Harmer told Sanchez to have people sign the form and give the original back to the employees after having made a copy for management.

The evidence shows that on November 11, 1988, Sanchez approached a number of employees on the plant floor and asked them what they thought of the Union. Sanchez also told these employees that if they wanted to avoid problems, they should sign a paper which he then presented to them. Sanchez did not allow the employees to read the paper either before or after they signed it.

The form which Sanchez apparently asked employees to sign had a place for the employee's name and the date. The text was as follows:

> It has been reported to me, that you asked the following member of Management _____, if you could be fined by the Union, in the event of a strike, for crossing the picket line, because you signed a Union form.
>
> The following is our reply:
>
> 1) We do not know what form you signed, and cannot therefore comment on its content.
>
> 2) However, if you write a letter to the Union, couched in the following language you will eliminate any obligation to them, and remove any possibility that they can fine you:
>
> Local 463
> IUEESMFW
> 87-80 Parsons Blvd.
> Jamaica, N.Y. 11432
>
> Date:
>
> Gentlemen:
>
> I hereby withdraw any application for membership I may have made, and resign membership status if I am a member.
>
> Very truly yours,
>
> 3) The Company cannot offer any assistance to you in writing, typing, copying or mailing your letter to the Union, but you should make two copies, retaining one yourself.
>
> 4) Please sign this form to acknowledge that you approached us on this matter, and that no approach was made by a member of Management.

Harmer testified that when Sanchez was discharged in April 1989, the originals of the forms were found among his papers; it then became clear to Harmer that Sanchez had not followed his instructions about returning originals to the employees. Harmer denied that he had received any signed forms from Sanchez and denied that he had instructed Sanchez to go out on the floor and collect signatures.[12]

Alba Diaz testified that when Sanchez approached her he said that President Duranton had sent him over to ask her opinion of the Union.[13] He also said that Duranton wanted to get rid of the Union. Then Diaz signed the paper which Sanchez said was necessary to avoid any problems.

Migdalia Carrion Rodriguez testified that when Sanchez came to her machine and told her to sign the papers, he would not tell her the purpose until after she had signed.[14] Then Sanchez said the purpose of the papers was to get rid of the Union and that Duranton had provided the papers. Sanchez never showed Rodriguez the text of the document she had signed.

Gloria Ocasio testified that Sanchez came to her machine and asked her to sign a paper.[15] Ocasio did not see what was written on the paper but Sanchez told her that if she signed it would protect her job. Sanchez also asked Ocasio what she thought of the Union. Ocasio signed the paper for Sanchez.

Harmer testified that during the negotiations in October 1988, the Union complained about various actions and statements by Sanchez. Respondent's representatives told the Union that Sanchez did not represent the Company, was not authorized to speak on its behalf, and that he was viewed as a madman. On April 3, 1989, when Harmer discharged Sanchez, he admitted guilt to at least two of the unfair labor practice (ULP) charges filed against the Company: he admitted the incidents with Jansen and Rosario and to making them miserable on the job. At the exit interview with Sanchez, Harmer told him that he was loyal and hard working and that he did a good job. He told Sanchez that he

[11] I note that there is no credible evidence to show that this is true.

[12] Sanchez had collected eight signatures on the forms given to him by Harmer.

[13] Diaz is Spanish speaking and testified through an interpreter.

[14] Rodriguez is Spanish speaking and testified through an interpreter.

[15] Ocasio is Spanish speaking and testified through an interpreter.

could not criticize him for his antiunion stance, but that he had warned him several times about Rosario and that he had to be careful what he said to unit employees. Harmer gave Sanchez 3 weeks' pay and a reference to another plastics company. Harmer testified that he had kept Sanchez on the payroll as a supervisor from October 1988 until April 1989, even though he was a ''madman'' because he was hard to replace.

2. Discussion and conclusions

As discussed above, in October 1988, Harmer blamed Rosario for statements he suspected some union supporters had made to employees. His blame of Rosario was based only on the fact that Rosario was a known supporter of the Union and that she was on the negotiating committee. He threatened to institute a lawsuit against her and to see that she lost her job. By these statements, Respondent violated Section 8(a)(1) of the Act.

It is undisputed that Sanchez taunted Rosario and Jansen. He told them that it was because of the Union that their duties had been changed and he told them that the union activists would all be fired. Sanchez saw Rosario at a machine giving breaks and taunted her again; he told her he had spoken to Duranton and that she should apologize to Duranton and help him get rid of the Union. Respondent violated Section 8(a)(1) of the Act when its supervisor threatened that nion supporters would be fired, when he suggested that their duties had been changed because they supported the Union, and when he tried to coerce Rosario into helping to get rid of the Union by implying that such help might result in the assignment of different duties to Rosario.

Contrary to Respondent's position, I find that Rosario and Jansen had no reason to doubt that Supervisor Sanchez spoke for Respondent. On one occasion, Sanchez cited Company President Duranton as authority for his statements. Although both Rosario and Jansen were members of the negotiating committee and had been told during the negotiations culminating in October 1988, that Sanchez was a ''madman'' and ''loose cannon'' and that he did not speak for management, he was not discharged until April 1989. The notice posted by Respondent disavowing Sanchez' actions was not posted until April 1989. In *Broyhill Co*., 260 NLRB 1366 (1982), cited by Respondent, the Company posted the notice repudiating its supervisor's conduct as soon as it learned of it. Here, the Company by its own admission, knew as early as the contract negotiations of fall 1988, that Sanchez was a ''madman'' and yet it did nothing to rein him in or to let all the employees know by a formal notice that he did not speak for management on labor relations. Employees on the negotiating committee, knowing that Respondent was on notice that Sanchez' conduct was objectionable, could reasonably conclude from the fact that Sanchez was still employed and still engaging in unlawful conduct that Respondent was not serious in October 1988, when it disavowed his activities.

I also find that Respondent was fully responsible for Sanchez' actions in soliciting employees to resign from the Union in November 1988. Sanchez approached employees on the shop floor while they were working, he asked them what they thought of the Union, he told them that Duranton had sent him over to obtain their help in getting rid of the Union, he told them that they had to sign a paper to avoid problems, and he said signing the paper would protect their jobs. Sanchez was interrogating the employees concerning their union sympathies, he was coercing them into helping the company president get rid of the Union, and he was threatening them that if they did not sign their jobs were not protected. Respondent violated Section 8(a)(1) of the Act. It is of no moment that none of the employees were actually shown the document they were asked to sign. Sanchez' message was clear; the employees knew they were signing something to protect their jobs and get rid of the Union.

In *Brunswick Food & Drug*, 284 NLRB 663 (1987), the Board affirmed the administrative law judge's ruling that ''an employer may . . . inform employees of [the right to revoke their authorization cards], even if employees have not solicited such information, so long as the employer makes no attempt to ascertain whether employees avail themselves of this right nor offers any assistance nor otherwise creates the impression that employees are in peril by refraining from revoking their cards.'' 284 NLRB at 673, citing *Mariposa Press*, 273 NLRB 528 (1984). In the instant case, Sanchez clearly gave the employees the impression that their jobs would be in peril if they did not sign the forms he gave them. Further, he did not inform the employees of their right to revoke their authorization cards; he told them to sign a paper to help Duranton get rid of the Union.

D. *Alleged Denial of Union Representation*

1. The facts

Jansen testified that in January 1989, while she was working on machine No. 1 she received a static shock and a burn from the machine. She told a supervisor named Nick and he said he would tell electrical technician Harry Wu to check it out. According to Jansen, she also told Peters about the injury. Then she called William J. Monahan, business agent for the Union. Monahan filed a complaint with OSHA.

On February 6, 1989, Jansen, Union Shop Steward Peter Starken, and Harmer walked around the plant with the OSHA inspector. Jansen pointed out the machine that had given her an injury.[16]

On February 7, Jansen was called to the conference room where she met with Harmer and Maureen Leverich, the then personnel manager. According to Jansen, Harmer asked Jansen what had happened on the machine when she was injured. Jansen asked for union representation by Monahan and then she asked for and received permission to leave the meeting. Later that day she was again called to a meeting. This time Harmer and Leverich had been joined by Supervisor Peters and Shop Steward Starken. Harmer told Jansen that he wanted ''to find out what had happened to [Jansen]. With the investigation with OSHA.'' When Jansen again said that she wanted Monahan present, Harmer told her that Monahan was not available within 5 minutes, and, as provided by the contract, he had asked Starken to attend instead. Jansen asked what her rights were. Harmer said that if she did not comply with the OSHA law she would be rep-

[16] Respondent was cited for several OSHA violations as a result of the complaint and the inspection. Two of the citations resulted from Jansen's complaint that she had been injured: Respondent was cited for a problem with a heating coil and for uninsulated wires hanging down.

rimanded. Jansen repeated that she wanted her union representative present and then asked if she could speak to Starken. Harmer said no. Starken said that they were getting nowhere because Jansen did not understand what Harmer was saying. Leverich then said ''we want to find out if what happened to you was the truth or a lie.'' Harmer repeated that Jansen had to comply with the OSHA law because she had initiated the complaint. He told her that if she did not cooperate, she would be penalized. Jansen said that she was willing to cooperate, but only with Monahan present.

Starken testified that he was called to a meeting on February 7, 1989, and told that he was to represent Jansen because Monahan was not available.[17] Harmer told Jansen that he had to conduct an investigation and that he needed her cooperation. He said that if Jansen did not cooperate, the Company would take disciplinary action against her. Starken said that Jansen wanted Monahan, but Harmer said that Monahan was not available. Later Starken repeated that Jansen wanted Monahan and he asked if he could go outside and talk to Jansen. Harmer refused. Then Leverich asked Jansen a question about the inspection the day before, but Jansen refused to answer. Leverich said that the investigation was to find out if, in fact, there had been an accident, if Jansen had notified anyone from the Company, or if Jansen had made it up. Jansen refused to answer and she kept insisting that she wanted Monahan present.

Harmer gave yet another version of the second meeting of February 7. According to Harmer, he was concerned about the uninsulated wires hanging down because they belonged to a component of the machine that had been taken out of service previously. When the component had been disconnected the wires had been fastened in such a way that they were inaccessible; Harmer clearly believed that the wires had been deliberately tampered with so that they hung down from the machine and created a serious hazard. In fact, Respondent's position is that Jansen never notified it of the hazard and that the hazard had to have been created deliberately, although Respondent has not suggested who may have been responsible.[18] Harmer testified that he interviewed a number of employees to find out how long the wires had been hanging down and that no one knew anything about it. When he tried to interview Jansen, she refused to cooperate. Harmer testified that he told her that he had an obligation to try to protect employees from hazards and he asked her if she had previously reported the hazard to management. Harmer also stated that Starken told Jansen that the Company had an obligation under OSHA to investigate and find out why a hazard went unreported. Harmer denied that he told Jansen that the law required her to cooperate and he did not tell her that if she refused to cooperate she would be subject to discipline. Harmer also denied telling Jansen she could not confer with Starken.

On February 10, 1989, Harmer called Jansen in to a meeting where Monahan was present and told her that he was issuing a verbal warning to her for refusing to cooperate in the investigation. When Monahan asked to confer with Jansen prior to the issuance of the warning, Harmer said that was not necessary under *Weingarten*. See *NLRB v. Weingarten*, 420 U.S. 251 (1975).

[17] Starken left Respondent's employ in August 1989, to accept other employment.

[18] I note that Jansen testified that she notified both Harry Wu and a supervisor named Nick of the shock she received from the machine. Although Wu testified that Jansen never told him of the condition, Nick did not testify and his failure to do so was not explained by Respondent.

2. Discussion and conclusions

As I noted above, Jansen was not the most accurate of witnesses. In addition, I observed during the hearing that Harmer felt deep antipathy to the Union and its representatives. Further Starken did not impress me as an accurate witness. Jansen's and Starken's testimony establishes that Jansen was determined to take no action and make no statement unless Monahan was present, and Jansen was not prepared to rely on Starken. I have studied the testimony of these witness carefully and have concluded that when Harmer sought to question Jansen, he did his best to state his purpose accurately and explain that OSHA required that he conduct an investigation. I find that Harmer told Jansen that she might be disciplined if she did not cooperate. I find, based on the uncontradicted testimony of Jansen and Starken, that Personnel Director Leverich told Jansen that the purpose of the investigation was to determine whether Jansen was lying about having been injured by the hanging wires. I also find that there was no request by Jansen or Starken that they be allowed to confer; Jansen wanted only her ''Union rep,'' that is she wanted Monahan. Indeed, the complaint itself alleges that on February 7, Jansen requested union representation and on February 10, Respondent refused to permit Jansen to confer with Monahan. There is no allegation that Respondent refused to permit Jansen to confer with Starken on February 7.

The parties agree that Respondent could not deny Jansen's request for union representation at an investigatory interview which she reasonably believed might result in disciplinary action. *NLRB v. Weingarten*, supra. Indeed, Respondent ended the first interview of February 7, 1989, as soon as Jansen said that she wanted a union representative, namely Monahan. General Counsel concedes that by providing Starken, who was available, instead of Monahan, who was not readily available, Respondent fulfilled its obligation to provide Jansen with union representation at the second interview of February 7. General Counsel argues that the facts show that Respondent refused Jansen's request to confer with Starken before the interview. I have found above that Respondent did not refuse any request for such a conference; Jansen and Starken did not request to confer. Jansen was adamant that only Monahan would do and she refused to participate in the investigatory interview unless Monahan was present. Thus, Respondent did not violate the act on February 7, 1989. General Counsel also argues that on February 10, with Monahan present, Respondent again violated the Act by refusing to let him confer with Jansen before the interview. The facts convince me that the meeting of February 10 was not investigatory, but rather that it was solely for the imposition of previously decided on discipline. Therefore, Respondent did not violate the Act on February 10, 1989. *Baton Rouge Water Works Co*., 246 NLRB 995, 997 (1979).

E. *Alleged Unilateral Change*

1. The facts

Article 15 of the collective-bargaining agreement provides, in relevant part:

> (d) Duly accredited representatives of the Union will be permitted to visit the plant for the purposes of administering the contract provided the following conditions are met:
>
> . . . .
>
> (iv) the Union must give at least twenty four (24) hours written notice of such visit;

Article 26 of the collective-bargaining agreement provides in relevant part:

> *Step One*
>
> (a) In the event any employee or the Union has a grievance, the aggrieved employee, or Union Steward . . . shall within three (3) working days of the date of the incident . . . file . . . a grievance.
>
> *Step Two*
>
> (b) If, within three (3) working days of the Company's receipt of the grievance, there has been no resolution . . . the Union may . . . notify the President or his designee that it wishes to discuss the matter. Said notification shall be in writing, and shall be submitted no later than three (3) working days of any written Company response to the grievance, or if no such response is made within the time set forth above, no later than six (6) working days from the date of the initial filing.
>
> (c) The Company shall offer to meet . . . with the Union for the purpose of discussing the grievance. The Company shall designate three (3) meeting times . . . and dates. . . . The Union shall select one of these times and dates.

Monahan testified that the Company always furnished its three suggested dates by mail for a Step 2 meeting and the Union responded by mail. According to Monahan, he did not submit any additional request to attend a Step 2 meeting other than his written acceptance of one of the dates proposed by the Company. Concerning plant visits, Monahan stated that he always submitted a written memo giving 24 hours' notice of such a visit and that lately the Union has used a fax machine to give such notices.

Monahan testified that he submitted a grievance on behalf of employee Barbara Johnson on April 11, 1989, concerning an incident that occurred on April 7, 1989. No response being forthcoming from Respondent, Monahan requested a Step 2 meeting by letter of April 19, 1989. On April 20, Harmer replied by letter to Monahan, stating that although the request for the Step 2 meeting had not been received until the 20th and was thus untimely, Respondent was nevertheless willing to meet for further discussion of the matter. Harmer's letter offered to meet on April 25, 26, or 27 at 8 a.m. Monahan received Harmer's letter during a plant visit on Friday, April 21. On Monday, April 24, he called Nancy Kuehne, the newly appointed personnel director, and told her would accept the date proposed for the next day, April 25. Monahan testified that Kuehne said the response had to be in writing and had to give 24 hours' notice; then Monahan changed his testimony to say Kuehne did not mention 24 hours' notice. Monahan told Kuehne that he would deliver his written acceptance later that evening; he did in fact give an employee at the plant a letter for Harmer stating that he would be at the plant on April 25 at 8 a.m. Monahan testified that when he presented himself at the plant the next morning, Harmer would not admit him for the meeting because he had not given 24 hours' notice.

Kuehne testified that she was new to her job on April 24, 1989, when Monahan called her to say he would come the next day for the meeting. After she spoke to Monahan on the telephone, she reported her conversation to Harmer who told her that Monahan had to give written notice. Kuehne then telephoned Monahan and informed him that written notice was required. When this second conversation was reported to Harmer, he told Kuehne that it was too late for Monahan to give the Company 24 hours' written notice because Monahan proposed to meet the next day at 8 a.m. Kuehne then made another call to Monahan and informed him not to come to the plant the next day.

Harmer testified that since the execution of the collective-bargaining agreement, union representatives have never come on the plant property without giving 24 hours' notice. Respondent submitted into evidence a number of plant visitation notices from the Union together with some grievance documents. These show that grievance meeting dates proposed by Respondent were always accepted at least on the day before the meeting was scheduled to be held. However, since they bear only a time stamp and no testimony was offered to show whether they were stamped immediately on receipt or whether they were held for several hours before being stamped received, I cannot find that these documents show conclusively that the acceptance was received at least 24 hours before the meeting was to be held. On the other hand, I credit Harmer's uncontradicted testimony that union representatives have never been on the premises without having given 24 hours' notice.

2. Discussion and conclusions

The contract language quoted above is clear and unambiguous. It provides that union representatives may visit the plant for the purposes of administering the contract on 24 hours' written notice. Manifestly, the grievance procedure is part of the administration of the contract. There is nothing in the language of the grievance steps to negate the requirement of 24 hours' notice. Where the contract is clear, it is unnecessary to consult the bargaining history or past practice at the plant. However, I note that the testimony establishes that, in practice, union representatives have never entered the plant without giving 24 hours' notice.

General Counsel's brief seems to rely on a distinction between the presence at the plant of union representatives for plant visits and for Step 2 grievance meetings. General Counsel apparently argues that when union representatives are at the plant for a grievance meeting they are not there for a plant visit. But the collective-bargaining agreement does not make any such distinction. It speaks only of plant visits for the purpose of administering the contract. There is

no way to read this contract so that conducting a grievance meeting does not constitute administering the contract.

I find that Respondent did not unilaterally institute a new requirement of 24 hours' notice before conducting a grievance meeting by refusing to meet with Monahan at the plant on April 25, 1989.

F. *Other Allegations of the Complaint*

The complaint alleged other violations. No evidence was adduced concerning some of these, and as to others, General Counsel seems to have abandoned the allegations at the time of writing the brief. I find no evidence that Respondent denied bathroom privileges to employees, denied insurance coverage to Rosario, promised its employees promotions if they abandoned the Union, nor that it engaged in the myriad other violations alleged.

CONCLUSIONS OF LAW

1. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

> All full-time and regular part-time production and maintenance employees, inspection employees, shipping and receiving employees and warehouse employees employed by Respondent at its Yaphank facility; but excluding all office clerical employees, professional employees, guards and supervisors as defined in Section 2 (11) of the Act.

2. At all times material, the Union has been the exclusive representative of the employees in the appropriate unit described above for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

3. By threatening its employees that it would file a lawsuit against them and that they would lose their jobs because of their support for and activities on behalf of the Union, Respondent violated Section 8(a)(1) of the Act.

4. By informing its employees that they had been given different job duties because of their support for the Union and by promising employees assignment to new job duties if they abandoned the Union, Respondent violated Section 8(a)(1) of the Act.

5. By coercively interrogating its employees concerning their support for the Union and by threatening employees that if they did not sign a paper to get rid of the Union their jobs would not be protected, Respondent violated Section 8(a)(1) of the Act.

6. General Counsel has not shown that Respondent engaged in unfair labor practices other than those found herein.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[19]

ORDER

The Respondent, LIR-USA Manufacturing Co., Inc., Yaphank, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees that Respondent will file a lawsuit against them and that they will lose their jobs because of their support for and activities on behalf of the Union.

(b) Informing employees that they have been given different job duties because of their support for the Union and promising employees assignment to new job duties if they abandon their support for the Union.

(c) Coercively interrogating its employees concerning their support for the Union and threatening employees that if they do not sign a paper to get rid of the Union their jobs will not be protected.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its plant in Yaphank, New York, copies of the attached notice marked ''Appendix.''[20] Copies of the notice, in English and in Spanish, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union

[19] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[20] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees that we will sue them or discharge them because of their support for and activities on behalf of Local Union 463, International Union of Electronic, Electrical, Salaried Machine and Furniture Workers, AFL–CIO.

WE WILL NOT inform our employees that they have been given different job duties because they support the Union and WE WILL NOT promise them assignment to new job duties if they abandon their support for the Union.

WE WILL NOT coercively interrogate our employees concerning their support for the Union.

WE WILL NOT threaten our employees that their jobs are not protected unless they sign a paper to get rid of the Union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

LIR-USA MANUFACTURING CO., INC.